



PUBLIC NOTICE

Federal Communications Commission
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DA 05-1887
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DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF EMPIRE ONE TELECOMMUNICATIONS TO FONIX CORPORATION

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-208

Comments Due: July 13, 2005
Reply Comments Due: July 20, 2005

On May 26, 2005, Empire One Telecommunications, Inc. ("EOT") and Fonix Corporation ("Fonix") (collectively the "Applicants"), pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ filed an application requesting authority to transfer control of EOT to Fonix.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because, immediately following the transactions: (1) Applicants and their affiliates combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) to the extent that the Applicants or their affiliates provide U.S. local exchange or exchange access services, those services will be provided only in geographic areas served by a dominant local exchange carrier that is not a party to the proposed transaction; and (3) none of the Applicants or their affiliates is dominant with respect to any U.S. domestic telecommunications service.³

EOT, a Delaware corporation, is a provider of interexchange and local telecommunications services in California, Colorado, Massachusetts, Michigan, New Jersey, New York, Pennsylvania and Texas. The following entities hold 10% or greater interests in

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

EOT: Paul Butler, a U.S. citizen (15.50%); Herbard Ltd., a British Virgin Islands company (51.91%); and the remaining interest (32.59%) held by a number of smaller investors, none of which owns 10% or more of EOT. Hebard Ltd. is wholly-owned by AE Finance, also a British Virgin Islands company, which is, in turn, controlled (99%) by Phyllis Quasha, of Nassau, Bahamas.⁴ No other entity holds a 10% or greater direct or indirect interest in EOT.

Fonix and its wholly-owned subsidiary, TOE Acquisition Corporation (“TOE”), are holding companies organized under Delaware law. Neither Fonix nor TOE hold any certificates of authority to provide telecommunications services. Fonix is a publicly-traded company, and no entity holds a 10% or greater interest in Fonix.

On November 19, 2004, EOT and Fonix entered into a Merger Agreement whereby TOE, a wholly-owned subsidiary of Fonix, will merge with and into EOT (“the Merger”). EOT will be the surviving entity and will become a wholly-owned subsidiary of Fonix. The Applicants anticipate that the current shareholders of EOT will transfer their ownership to Fonix, resulting in Fonix, through TOE, acquiring 100% ownership of EOT. The shareholders of Empire who do not exercise dissenter’s rights in connection with the transaction will acquire cash and common stock in Fonix as consideration for the Merger.

Applicants assert that the proposed transfer of control is in the public interest because, by merging Applicants’ resources, the post-transaction company will become a stronger competitor in the marketplace for local, interstate, and international telecommunications services. They state that EOT’s customers will benefit from the combined company’s improved resources and assets, which will help to ensure continuity of service and enhance the ability of Empire to offer a broader range of innovative products and services to customers. They further state that the proposed transaction will strengthen the ability of the post-merger company to offer services in competition with other providers, including incumbent local exchange carriers, in its operating areas.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission’s rules and policies. Interested parties may file

⁴ On December 5, 2002, EOT emerged as the sole surviving entity from the Chapter 11 bankruptcy reorganization of Sonus Communications Holdings, Inc., with the new ownership described herein. At that time, EOT did not seek Commission approval for the transfer of ownership that occurred when it emerged from bankruptcy. EOT subsequently filed a transfer of control application and associated request for special temporary authority (STA) to correct that omission. *See* Joint International and Domestic Application for Transfer of Control, WC Docket No. 05-168 (filed April 1, 2005). This application was amended on April 19, 2005. *See* Amendment to Application on Behalf of Empire One Telecommunications, Inc., for Special Temporary Authority for Approval of the Transfer of Control/Assignment of Domestic Authority from Empire One Telecommunications, Inc. DIP, to Empire One Telecommunications, Inc., WC Docket No. 05-168 (filed April 19, 2005). The WC Docket No. 05-168 Application and STA are still pending.

comments on or before July 13, 2005 and reply comments on or before July 20, 2005.⁵

Unless otherwise notified by the Commission, Applicants are permitted to transfer the stock and related control on the 31st day after the date of this notice.⁶ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, www.bcpweb.com; phone: (202) 488-5300 fax: (202) 488-5563;

⁵ See 47 C.F.R. § 63.03(a).

⁶ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- (2) Tracey Wilson-Parker Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C317, Washington, D.C. 20554; e-mail: alexis.johns@fcc.gov
- (4) Terri Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: terri.natoli@fcc.gov;
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Alex Johns at (202) 418-1167.

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